Peguam Negara Malaysia v Mkini Dotcom Sdn Bhd & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPLICATION NO 08(L)-4–06 OF 2020 (W)

ROHANA YUSUF PCA, AZAHAR CJ (MALAYA), ABANG ISKANDAR CJ (SABAH AND SARAWAK), ZAWAWI SALLEH, NALLINI PATHMANATHAN, VERNON ONG AND ABDUL RAHMAN SEBLI FCJJ

2 JULY 2020

Civil Procedure — Contempt of court — Committal proceedings — Respondents published on their online news portal remarks made by some alleged readers scandalising the Judiciary — Attorney general obtained leave to commence committal proceedings against respondents — Whether leave should be set aside for AG's failure to serve on respondents formal notice to show cause why they should not be committed for contempt of court — Whether said failure was not fatal and did not prejudice respondents — Whether grant of leave was proper as prima facie case was shown that respondents had published the contemptuous remarks

The respondents applied to set aside leave that was granted to the attorney general to commence committal proceedings against them for committing contempt of court. The respondents had published on their *Malaysiakini* news portal an article entitled 'CJ orders all courts to be fully operational from July 1' to which were attached remarks, allegedly made by some readers, that scandalised the judiciary in general and the Chief Justice of the Federal Court in particular. At the hearing of the instant application, the respondents submitted, inter alia, that the grant of leave should be set aside for non-compliance with O 52 r 2B of the Rules of Court 2012 ('the ROC'). This rule applied in all cases where the contempt committed was not in the face of the court and required the applicant for leave to personally serve on the alleged contemnor a formal notice to show cause why committal proceedings should not be taken against the contemnor.

Held, dismissing the application:

(1) A prima facie case had been made out that the respondents had published the impugned comments on the Malaysiakini online news portal and that only upon being made aware by the police did the first respondent remove the comments from the website. By virtue of s 114A of the Evidence Act 1950, the respondents were presumed to have published

the impugned comments. The presumption was a rebuttable one. Both parties agreed that the impugned words were contemptuous (see paras 3–5).

(2) On the facts of the instant case, the non-compliance with O 52 r 2B of the ROC was not fatal and did not prejudice the respondents. Looking at the nature of the impugned comments which implicated the Judiciary as a whole, including the Chief Justice of the Federal Court, the Federal Court was the right forum for the proceedings to be commenced (see para 6).

[Bahasa Malaysia summary

Responden-responden memohon untuk menolak kebenaran yang diberikan kepada Peguam Negara untuk memulakan prosiding komital terhadap mereka kerana melakukan penghinaan terhadap mahkamah. Responden-responden telah menerbitkan di portal berita Malaysiakini mereka sebuah artikel yang bertajuk 'CJ orders all courts to be fully operational from July 1' yang melampirkan kenyataan, yang didakwa dibuat oleh sebilangan pembaca, yang menghina Badan Kehakiman secara umum dan Ketua Hakim Negara Mahkamah Persekutuan. Pada pendengaran permohonan segera, responden-responden mengemukakan, antara lain, bahawa kebenaran harus diketepikan kerana tidak mematuhi A52 k 2B Kaedah-Kaedah Mahkamah 2012 ('KKM'). Peraturan ini digunapakai dalam semua kes di mana penghinaan yang dilakukan tidakberlaku dalam mahkamah dan mengkehendaki pemohon mendapat izin untuk secara peribadi memberikan notis rasmi kepada penghina mahkamaah yang dituduh untuk menunjukkan sebab mengapa prosiding komital tidak boleh diambil terhadap penghina mahkamah tersebut.

Diputuskan, menolak permohonan:

(1) Satu kes prima facie telah dibuktikan bahawa responden-responden telah menerbitkan komen-komen yang tidak berasas di portal berita dalam talian Malaysiakini dan hanya setelah dimaklumkan oleh polis, responden pertama telah membuang komen-komen tersebut dari laman web. Berdasarkan s 114A Akta Keterangan 1950, responden-responden dianggap telah menerbitkan komen-komen yang tidak berasas itu. Anggapan tersebutboleh dibantah. Kedua-dua pihak bersetuju bahawa kata-kata yang tidak berasas itu adalah menghina (lihat perenggan 3–5).

(2) Mengenai fakta-fakta kes ini, ketidakpatuhan terhadap A52 k 2B KKM tidak memberi kesan yang mendalam dan tidak memberi kesan buruk kepada responden-responden. Melihat kepada sifat komen yang tidak berasas yang melibatkan Badan Kehakiman secara keseluruhan, termasuk Ketua Hakim Mahkamah Persekutuan, maka Mahkamah

A Persekutuan adalah forum yang tepat untuk prosiding dimulakan (lihat perenggan 6).]

Legislation referred to

Evidence Act 1950 s 114A
B Rules of Court 2012 O 52 r 2B

Suzana bt Atan (Narkunavathy Sundareson with her) (Senior Federal Counsel, Attorney General's Chambers) for the applicant.
Malik Imtiaz Sarwar (Surendra Ananth and Khoo Suk Chyi with him) (Surendra
C *Ananth) for the respondents.*
Joy Wilson Appukuttan (KH Lim & Co) watching brief for Bar Council.
YB Senator Yusmadi Yusoff (Fahda Nur Yusmadi) watching brief for Centre for Independent Journalism and Gerakan Media.
New Sin Yew (Amer BON) watching brief for International Federation of
D *Journalists (IFJ) and National Journalist Union of Malaysia (NJUM).*

Rohana Yusuf PCA:

E **[1]** This is our decision on whether the application by *Malaysiakini* in encl 22 to set aside the leave granted by this court should be allowed. The subject of the contempt proceedings relates to the following comments which appeared in *Malaysiakini* on the 9 June 2020:

(a) *Ayah Punya kata*: The High Courts are already acquitting criminals
F without any trial. The country has gone to the dogs;

(b) *GrayDeer0609*: Kangaroo courts fully operational? Musa Aman 43 charges fully acquitted. Where is law and order in this country? Law of the Jungle? Better to defund the judiciary!

G (c) *Legit*: This judge is a shameless joker. The judges are out of control and the judicial system is completely broken. The crooks are being let out one by one in an expeditious manner and will running wild looting the country back again. This Chief Judge is talking about opening of the courts. Covid 19 slumber kah!

H (d) *Semua Boleh — Bodoh pun Boleh*: Hey Chief Justice Tengku Maimun Tuan Mat — Berapa JUTA sudah sapu — 46 kes corruption — satu kali Hapus!!! Tak Malu dan Tak Takut Allah Ke? Neraka Macam Mana? Tak Takut Jugak? Lagi — Bayar balik sedikit wang sapu – lepas jugak. APA
I JUSTICE ini??? Penipu Rakyat ke? Sama sama sapu wang Rakyat ke???

(e) *Victim*: The Judiciary in Bolihland is a laughing stock.

[2] We are mindful that in the course of adjudicating on the setting aside application, we should not venture into or purport to decide the substantive

merits of the committal application, which is properly the subject matter of the second stage of the adjudication.

[3] In respect of this issue we are of the view that the following facts as revealed:

(a) the first respondent facilitates publication;

(b) the editorial policy allowing editing, removing and modifying comments;

(c) only upon being made aware by the police, the first respondent indeed removed the comments; and

(d) evidence revealing that the editors of the first respondent review postings on a daily basis.

[4] Based on all these facts, inter alia, we are of the view that the respondents had published the impugned comments and that a prima facie case had been made out.

[5] We are also of the view that, furthermore by virtue of s 114A of the Evidence Act 1950 the respondents are presumed to have published the impugned comments. The presumption is a rebuttable one. Hence, we find a prima facie case has been made out for the following reasons:

(a) the words read out above are contemptuous as agreed by both parties; and

(b) prima facie there has been publication by *Malaysiakini* as these statements appeared on their news portal.

[6] The other grounds relied upon by the respondents to set aside the leave are the followings:

(a) O 52 r 2B of the Rules of Court 2012 — procedural requirement:
On the requirement of notice pursuant to O 52 r 2B which has not been complied with, on the facts of this case, we agree that the non-compliance is not fatal or prejudicial to the respondents; and

(b) commencement at Federal Court:
Looking at the nature of the impugned comments earlier elaborated, which implicate the judiciary as a whole, which also include the Chief Justice of the Federal Court, we are of the view that this court is the right forum to commence these proceedings.

[7] On all the above reasons, the application is, hereby unanimously dismissed, and we will hear the merits of the attorney general's application in encl 19 on another date.

[8] Pending the final disposal of the matter, we hereby direct parties not to make any comment on this case to avoid sub judice.

Application dismissed.

Reported by Ashok Kumar